



South Florida Water Management District

GOVERNING BOARD MEETING MINUTES

October 14, 2010

9:00 AM

District Headquarters - B-1 Auditorium
3301 Gun Club Road
West Palm Beach, FL 33406

Members Present:

Sandy Batchelor
Charles Dauray
Kevin Powers

Eric Buermann, Chair
Shannon Estenoz
Glenn Waldman

Joe Collins
Jerry Montgomery

1. Call to Order - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 9:03 a.m.

2. Pledge of Allegiance - Eric Buermann, Chairman, Governing Board

Ms. Estenoz led the group in the Pledge of Allegiance.

Following the pledge, Chair Buermann commemorated the closing of the U.S. Sugar land acquisition which occurred earlier in the week.

Ruth Clements, Director, Land Acquisition Department, explained the closing process and reported that the 42 square mile purchase is the largest acquisition utilizing District funds. Ms. Clements reviewed other benefits of the acquisition such as the donations of Deer Fence Canal and 24 acres in Clewiston.

Tommy Strowd, Deputy Executive Director, Operations & Maintenance introduced James Bridgeman, who will be the Project Manager for this transaction. Mr. Strowd reported on the transaction issues including surface water and consumptive use permits, fuel tank ownership-regulatory transfer, and the property baseline acquisition survey.

Aaron Basinger, Director, Finance Department, then reported on the inventory management and control of the property.

Ms. Estenoz said this is a big moment and said that the Board is committed to following up with the initiatives in helping the Glades Community. She explained that having this land available to help achieve water quality standards should have a positive effect on the federal legal cases. She praised the staff for their hard work.

Chair Buermann read into the record a statement from Governor Charlie Crist regarding the land acquisition and the restoration of the Everglades.

Ms. Batchelor said she was very pleased and honored to be a part of this transaction.

Mr. Powers praised Ms. Wehle's leadership for moving forward with this land acquisition.

Mr. Collins praised staff and Ms. Wehle and said a job well done.

Mr. Dauray commented on the history of the land acquisition explaining important work still lies ahead. The District will need continued support from the people of Florida for Everglades restoration.

Chair Buermann thanked the previous and present Board members and discussed the difficulty of this transaction. He also thanked staff for their hard work on the transaction. He said tomorrow we can begin planning and moving forward on Everglades restoration.

Mr. Montgomery praised staff for their incredible work. He said as we go forward we have fiscal challenges, federal lawsuits, and said he hopes we can move forward and work together on Everglades restoration.

Ms. Estenoz praised staff and said it is time to celebrate and be proud of all their hard work.

Mr. Waldman commented on the willing seller, congratulated the leaders of the agency, and said this is a time to celebrate.

Ms. Wehle praised staff saying they did an excellent job, and she could not be prouder of leading this group.

The Governing Board then accepted the deeds for the U.S. Sugar Corporation property.

Chair Buermann called on Ms. Turnquest who introduced James Gibson, one of the original Florida Highwaymen artists. Mr. Gibson has been recognized as an official Florida artist and his work hangs in Tallahassee in the Capital Building, the Governor's mansion and the Florida Supreme Court. Mr. Gibson had a display of paintings in the lobby and donated one for the staff's Race for the Cure fund raising campaign.

3. Employee Recognitions - Presented by Carol Wehle, Executive Director

- 30 Years of Service Recognition: Anthony Cannon
- 25 Years of Service Recognition: Craig VanAuken, Elizabeth Ross, Paulette Glebocki
- September Employee of the Month: Joni Warner
- October Employee of the Month: Elizabeth Ross
- October Team of the Month: The Everglades Litigation Team
- Good Samaritan Award: Steve Partney, Art Sengupta, Northon Jocelyn, Jose Guardiario
- Good Samaritan Award: George Wheeler, Terry Pennington, Terry Torrens

Carol Wehle, Executive Director, presented the September Employee of the Month; October Employee and Team of the Month; two, Good Samaritan Awards; one, 30-Year Service Award; and three, 25-year Service Awards.

4. Recognition of Mark Bruner and Christine Christofek of the Solid Waste Authority of Palm Beach County for their Valued Support to the Districts Staff and Participation in the Development of the Districts Debris Management Training Program - Presented by Tommy Strowd, Deputy Executive Director, Operations & Maintenance

Tommy Strowd, Deputy Executive Director, Operations & Maintenance, recognized Mark Bruner of the Solid Waste Authority for his support to District staff and participation in the development of the District's Debris Management Training Program.

5. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services

Annette Carter, Director, Office of Governing Board & Executive Services, read into the record: Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. The Chairman has determined good cause exists. These changes are being made in order to permit the Governing Board to accomplish necessary public business at this meeting and to reflect the items on the agenda that have been deleted, revised, added or postponed. These changes have been listed in the Addendum available to the public at the entrance to this meeting room and provided to the Governing Board.

6. Abstentions by Board Members from items on the Agenda

There were no abstentions by Board members.

7. Audit & Finance Committee Report - Charles Dauray, Chair

Mr. Dauray reported on the Audit & Finance Committee meeting which was held on October 13, 2010 at District headquarters.

There were six audit reports presented for the Committees approval:

Audit of the District's SAP Solutions Center

Audit of Land Acquisition and Management Processes

Audit of the District's Integrated Real Estate Information System (IRIS)

Audit of the Vegetation Management Program

Audit of Operations and Maintenance's Inventory Processes and Procedures

Audit of Operations and Maintenance's Equipment Leasing

The Committee accepted each report and moved to present the reports to the full Governing Board for approval.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz, to accept and approve the six audit reports. Vote called. Voting yes: Eric Buermann, Shannon Estenoz, Charles Dauray, Sandy Batchelor, Kevin Powers, Jerry Montgomery, Glenn Waldman, Joe Collins. Motion passed.

The Committee accepted the proposed Audit Plan for FY 2011 and moved to present the Audit Plan to the full Governing Board for approval.

Motion made by Joe Collins, seconded by Jerry Montgomery, to accept and approve the 2011 Audit Plan. Vote called. Voting yes: Eric Buermann, Shannon Estenoz, Charles Dauray, Sandy Batchelor, Kevin Powers, Jerry Montgomery, Glenn Waldman, Joe Collins. Motion passed.

8. Human Resources & Outreach Committee Report - Jerry Montgomery, Chair

Mr. Montgomery reported on the Human Resources & Outreach Committee meeting which was held on October 13, 2010. Issues discussed were the HR Solutions Year in Review and the Lake Okeechobee Regional Initiative, given by Philip Bacon of the Collins Center for Public Policy.

9. Water Resources Advisory Commission Report (WRAC) - Shannon Estenoz, Chair

Rick Smith, WRAC Facilitator, reported on the WRAC meeting which was held on October 7, 2010.

Ms. Estenoz requested a letter be written in support of the nomination and appointment of the Honorable Kristin Jacobs, County Commissioner for Broward County, to the National Ocean Council representing local government. The Board agreed.

Chair Buermann asked Vice Chair Montgomery to assume the Chair.

Mr. Buermann proposed the following appointment to the WRAC for a two-year term, effective today:

Mr. Kahlil Kettering, Biscayne Bay Restoration Program Analyst, National Parks and Conservation Association, to represent the Environmental Groups.

Motion made by Kevin Powers, seconded by Glenn Waldman, to approve this recommendation. Vote called. Voting yes: Eric Buermann, Shannon Estenoz, Charles Dauray, Sandy Batchelor, Kevin Powers, Jerry Montgomery, Glenn Waldman, Joe Collins. Motion passed.

Mr. Buermann proposed the following appointment to the WRAC Lake Okeechobee Committee, effective today, to replace Mr. Paul Reynolds who has resigned: Mr. John Cassani, representing the Southwest Florida Watershed Council, an Environmental Group.

Motion made by Sandy Batchelor, seconded by Glenn Waldman, to approve this recommendation. Vote called. Voting yes: Eric Buermann, Shannon Estenoz, Charles Dauray, Sandy Batchelor, Kevin Powers, Jerry Montgomery, Glenn Waldman, Joe Collins. Motion passed.

After taking the action, Mr. Buermann assumed the Chair.

Public Comment: John Arthur Marshall, Marshall Foundation, provided a handout to the Board regarding restoration of a Pond Apple forest.

Consent Agenda

10. Public Comment on Consent Agenda

Public Comment: Newton Cook, United Waterfowlers, commented on Consent Item 43 and supports the Kissimmee Boat Ramp and Day Use Facility project in Polk County.

11. Pull Items for Discussion from Consent Agenda

There were no items pulled from the Consent Agenda for discussion.

12. Board Comment on Consent Agenda

Focusing on several consent agenda items, Mr. Dauray commented on Marco Island's reuse system and other projects on the West coast and said the funds from the Big Cypress Basin are being used very efficiently. Mr. Dauray also reported on the expansion of the CREW trust property.

Regulatory Matters

13. Denials

Consent Agreements

Conservation Easement Amendments and Releases

Seminole Tribe Work Plans

14. Right of Way Occupancy New Permits

Right of Way Occupancy Permit Requests with Waiver of District Criteria

Right of Way Occupancy Permit Requests for Denial

Everglades Restoration and Capital Projects

15. **2010-1000** A Resolution of the Governing Board of the South Florida Water Management District approving the transfer of rights in reservations to Central Broward Water Control District containing 2,963 acres, more or less, in Sections 26, 27, 34 and 35, Township 50 South, Range 40 East and Sections 2, 3, 10 and 11, Township 51 South, Range 40 East, Broward County, Florida; providing an effective date. (Vinola Rada, ext. 6158)
16. **2010-1001** A Resolution of the Governing Board of the South Florida Water Management District approving the release of a canal reservation, containing 9.304 acres, more or less, Cedarwood Commercial - Sheridan and Palm, Plat Book 179, Page 18, Section 5, Township 51 South, Range 41 East, Broward County, Florida; providing an effective date. (Vinola Rada, ext. 6158)
17. **2010-1002** A Resolution of the Governing Board of the South Florida Water Management District approving the release of easement interests containing 0.35 acres, more or less, over a portion of Lot 4, Tierra Del-Rey South (PB: 35-64), lying in Section 24, Township 46 South, Range 41 East, Palm Beach County, Florida; subject to satisfaction of certain requirements; providing an effective date. (Linda Schindeler, ext. 6838)
18. **2010-1003** A Resolution of the Governing Board of the South Florida Water Management District approving the release of easement interests containing 0.02 acres, more or less, over a portion of Lot 9, Block 5, 1st Addition to Kendall Park Estates (PB: 82-52), which abuts the District's C-100A Canal, lying in Section 11, Township 55 South, Range 40 East, Miami-Dade County, Florida; subject to satisfaction of certain requirements; providing an effective date. (Linda Schindeler, ext. 6838)
19. **2010-1004** A Resolution of the Governing Board of the South Florida Water Management District approving the release of easement interests with respect to 0.96 acre, more or less, to the underlying fee owner at no cost; being a portion of the C-42 Canal right of way, in Section 31, Township 49 South, Range 41 East, Broward County; subject to satisfaction of certain terms, conditions and requirements; and approve waiver of the application fee; providing an effective date. (Linda Schindeler, ext. 6838)
20. **2010-1005** A Resolution of the Governing Board of the South Florida Water Management District to approve the purchase of land interests containing 5.0 acres, more or less, for the Southern Corkscrew Regional Ecosystem Watershed Project ("Critical CREW Project"), in Lee County, in the amount of \$75,000.00 together with statutory costs and attorneys' fees in the total amount of \$22,970.00 and all associated costs, for which dedicated funds (Florida Forever Trust Fund), are budgeted; approve declaring surplus, disposal of, and removal from the asset records, any such structures and improvements deemed unnecessary for the stated purpose of the original land acquisition; providing an effective date. (Tom Hanaway, ext. 6668)

- 21. 2010-1006** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the proposed acquisition of a land interest containing 5.0 acres for the Southern Corkscrew Regional Ecosystem Watershed Project ("Critical CREW Project"), in Lee County, and requesting the release of funds in the amount of \$75,000.00 from the Florida Forever Trust Fund for acquisition of such land interest, together with statutory costs and associated costs; providing an effective date. (Tom Hanaway, ext. 6668)
- 22. 2010-1007** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the proposed acquisition of land interests containing 191.12 acres for the Southern Corkscrew Regional Ecosystem Watershed Project ("Critical CREW Project"), in Lee County, and requesting the release of funds in the amount of \$3,828,890.00 from the Florida Forever Trust Fund for acquisition of such land interests, together with statutory costs and associated costs; providing an effective date. (Tom Hanaway, ext. 6668)
- 23. 2010-1008** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with Rare Earth Sciences, Inc. d/b/a HSA Engineers and Scientists, one of four firms selected under Request for Proposal 6000000369 for Water Quality Monitoring Services, in an amount not to exceed the total funding of \$750,000 for all four contracts (4600002163, 4600002164, 4600002165, and 4600002166), for which \$250,000 in ad valorem and dedicated funds (Florida Bay Fund) are budgeted; and the remainder is subject to Governing Board approval of the FY12-14 budgets; providing an effective date. (Contract Number 4600002163) (Nicole Howard, ext. 4765)
- 24. 2010-1009** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with Milian, Swain & Associates, Inc., one of four firms selected under Request for Proposal 6000000369 for Water Quality Monitoring Services, in an amount not to exceed the total funding of \$750,000 for all four contracts (4600002163, 4600002164, 4600002165, and 4600002166), for which \$250,000 in ad valorem and dedicated funds (Florida Bay Fund) are budgeted; and the remainder is subject to Governing Board approval of the FY12-14 budgets; providing an effective date. (Contract Number 4600002164) (Nicole Howard, ext. 4765)
- 25. 2010-1010** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with Tetra Tech EC, Inc., one of four firms selected under Request for Proposal 6000000369 for Water Quality Monitoring Services, in an amount not to exceed the total funding of \$750,000 for all four contracts (4600002163, 4600002164, 4600002165, and 4600002166), for which \$250,000 in ad valorem and dedicated funds (Florida Bay Fund) are budgeted; and the remainder is subject to Governing Board approval of the FY12-14 budgets; providing an effective date. (Contract Number 4600002165) (Nicole Howard, ext. 4765)

26. **2010-1011** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a three year work order contract, subject to successful negotiations with ENTRIX Inc., one of four firms selected under Request for Proposal 6000000369 for Water Quality Monitoring Services, in an amount not to exceed the total funding of \$750,000 for all four contracts (4600002163, 4600002164, 4600002165, and 4600002166), for which \$250,000 in ad valorem and dedicated funds (Florida Bay Fund) are budgeted; and the remainder is subject to Governing Board approval of the FY12-14 budgets; providing an effective date. (Contract Number 4600002166) (Nicole Howard, ext. 4765)

Executive Office

27. **2010-1012** A Resolution of the Governing Board of the South Florida Water Management District approving an amendment to Contract 4600002147 with Carlton Fields, P.A., for legal services for the Friedman/Starkman v. South Florida Water Management District, consolidated Case No. 07-CA-4772. This Amendment will provide an additional \$406,800.00 for which FY '11 Ad Valorem funds are budgeted, providing an effective date.
28. **2010-1013** A Resolution of the Governing Board of the South Florida Water Management District to authorize District staff to file suit, pursue any appropriate damages and remedies, and take all appropriate action, including the authority to settle the matter, subject to the approval of the Executive Director, against DBS Trust LT, and any other appropriate or necessary parties, in Lee County Circuit Court or other appropriate forum, regarding the property located in Section 6, Township 43, Range 25, North Fort Myers, Lee County, Florida. (Alison Kelly, ext. 2977)
29. **2010-1014** A Resolution of the Governing Board of the South Florida Water Management District authorizing a settlement agreement for \$146,900.00, plus \$41,877.00 for statutory attorneys fees, and \$13,500.00 for experts fees and costs, for which dedicated funds (Florida Forever Trust Fund) are budgeted, for a condemnation action involving approximately 5 acres (Tract No. 003-778 Wayne Rinkenback Individually and as Trustee of the Albert F. Rinkenback Grantor Living Trust Dated 3-18-93), within the designated boundaries of the Southern Corkscrew Regional Ecosystem Watershed Project (Critical Crew Project), styled South Florida Water Management District v. Camille B. Snyder, et al., filed in the 20th Circuit Court for Lee County, Florida, case no. 04-ca-1334; providing an effective date. (Ed Artau, ext. 6431)
30. Enter a Final Order Dismissing Petition and Closing File in the matter of Tex Development Corporation v. Lee County and South Florida Water Management District, as a result of the Division of Administrative Hearings' (DOAH) Order Closing File in DOAH Case No. 10-2485 (Alison Kelly, Ext. 2977)

Regulatory and Public Affairs

- 64. 2010-1036** A Resolution of the Governing Board of the South Florida Water Management District accepting the Broward Water Resources Task Force report; expressing appreciation to the members of the Broward Water Resources Task Force and Technical Team for their efforts; providing an effective date. (Dean Powell, ext. 6787)
- 33. 2010-1017** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a one (1) year cooperative agreement with the City of Marco Island in fiscal year 2011 to continue the septic tank replacement program for the Gulfport and East Winterberry sewer districts for the fiscal year 2011, in the total amount of \$6,000,000, for which the District contribution will be in an amount not to exceed \$200,000, of which dedicated funds (Big Cypress Basin) are budgeted; providing an effective date. (Contract No. 4600002216) (Max Guerra, ext. 7612)
- 34. 2010-1018** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a one (1) year cooperative agreement with the City of Marco Island in fiscal year 2011 for the construction of the reclaimed water production facility - Phase III expansion, and finished water storage tank for the reverse osmosis (RO) plant expansion in the total amount of \$12,000,000, of which the District contribution will be in an amount not to exceed \$700,000, for which dedicated funds (Big Cypress Basin) are budgeted; providing an effective date. (Contract No. 4600002214) (Max Guerra, ext. 7612)
- 35. 2010-1019** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a one (1) year cooperative agreement with Collier County in fiscal year 2011 for the construction of the North County Water Reclamation Facility Pond Liner Phase II Project, in the total amount of \$2,100,000, of which the District contribution will be in an amount not to exceed \$500,000, for which dedicated funds (Big Cypress Basin) are budgeted; providing an effective date. (Contract No. 4600002212) (Max Guerra, ext. 7612)
- 36. 2010-1020** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a one (1) year cooperative agreement with Collier County in fiscal year 2011 to continue the stormwater water improvements in fiscal year 2011, in the total amount of \$2,300,000, of which the District contribution will be in an amount not to exceed \$775,000, for which dedicated funds (Big Cypress Basin) are budgeted; providing an effective date. (Contract No. 4600002213) (Max Guerra, ext. 7612)
- 37. 2010-1021** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a one (1) year cooperative agreement with the City of Naples in fiscal year 2011 to continue the construction of stormwater quality improvements in Basin III in fiscal year 2011, in the total amount of \$1,200,000, for which the District contribution will be in an amount not to exceed \$600,000, of which dedicated funds (Big Cypress Basin) are budgeted; providing an effective date. (Contract No. 4600002210) (Max Guerra, ext. 7612)

38. **2010-1022** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a one (1) year cooperative agreement with the City of Marco Island in fiscal year 2011 to continue the island-wide construction of stormwater system improvements in fiscal year 2011, in the total amount of \$1,800,000, of which the District contribution will be in an amount not to exceed \$500,000, of which dedicated funds (Big Cypress Basin) are budgeted; providing an effective date. (Contract No. 4600002215) (Max Guerra, ext. 7612)
39. **2010-1034** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to Contract No. 3600000786 with the Miami River Commission for FY11 operational and non-recurring project support to extend the term by ten (10) months from November 16, 2010 to September 30, 2011, in the amount of \$250,000 for which FY11 ad valorem funds are budgeted; providing an effective date. (Contract No. 3600000786-A09) (Lucia Perez, ext. 7235)
41. Accept the 2010 Update of the Loxahatchee River Wild and Scenic River Management Plan. (Sean Sculley, ext. 6109)

Operations and Maintenance

42. **2010-1024** A Resolution of the Governing Board of the South Florida Water Management District to authorize a Sole Source Procurement of Fairbanks Morse opposed piston engine parts for the overhaul of District engines through multiple purchase orders to be issued on an as needed basis to Coltec Industries, Incorporated dba Fairbanks Morse Engine, as an exception to the general standards of competition over a 3 year period, up to the not-to-exceed amount of \$600,000 of which \$200,000 in ad valorem funds are budgeted and the remainder is subject to Governing Board approval of the FY12-FY13 budgets; providing an effective date. (Purchase Order 95/XXXX) (Tom Debold, ext. 4103)
43. **2010-1025** A Resolution of the Governing Board of the South Florida Water Management District requesting the release of funds from the Florida Forever Trust Fund by the Department of Environmental Protection for the capital expenditures connected with the construction costs of the Kissimmee Boat Ramp and Day Use Facility project in Polk County, in the amount of \$840,000 and associated costs; providing an effective date. (Steve Coughlin, ext 2603)
44. **2010-1026** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 1 year cost share agreement with the Everglades Agricultural Area Environmental Protection District for Stormwater Treatment Areas Optimization Support, in the amount of \$700,000 of which the District's total contribution is \$400,000 in ad valorem funds are budgeted; providing an effective date; (Contract Number 4600002249) (Delia Ivanoff, ext. 2681)
45. **Board Vote on Consent Agenda**

Motion made by Kevin Powers, seconded by Charles Dauray to Approve the following item(s): 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 64

Vote called. Voting yes: Kevin Powers, Charles Dauray, Sandy Batchelor, Eric Buermann, Jerry Montgomery, Glenn Waldman. Not present: Joe Collins, Shannon Estenoz. Motion passed.

Discussion Agenda

NOTE Before hearing the discussion agenda, Chair Buermann recognized and called on Representative Ralph Poppell, Chair of the Natural Resources Appropriations Committee (District 29). Rep. Poppell provided a brief history of his farming career and expressed concerns about the State purchasing property and the public property surrounding the small landowners. He focused on a particular small landowner and suggested the property maybe suitable to be used for a treatment area. He said he has been working with District staff over the past 2 years on the issue and reported his frustration over this timeframe. He asked the Board to move forward on this issue.

Mr. Montgomery reported on his meeting with the landowners and said his commitment is to meet with the landowners privately which is what they requested.

There was further Board discussion on private property rights, dispersed water storage, and the associated learning process with the increased number of public/private partnerships.

Ms. Wehle provided background information on the Project Implementation Report (PIR) for the Northern Everglades. Ms. Wehle discussed issues with the USACE and water quality features in CERP projects. Ms. Wehle discussed options the District has presented to the small landowner. District staff continue to work on options and projects with the dispersed water storage program.

Rep. Poppel discussed funding and the need for a cost benefit ratio for programs to show a benefit to the environment and savings for the taxpayers.

Chairman Buermann thanked Rep. Poppell for his comments.

46. TECHNICAL REPORTS

State of Water Resources

A) Water Conditions & Water Supply Report - Susan Sylvester, Director, Operations Control & Hydro Management Department (ext. 6152)

B) Ecological Conditions Report - Deborah Drum, Deputy Director, Restoration Sciences Department (ext. 6392)

C) US Army Corps of Engineers' Lake Okeechobee Report - Kimberley Taplin, P.E., West Palm Beach Deputy Program Manager for Restoration, US Army Corps of Engineers

Susan Sylvester, Director, Operations Control, reported on rainfall over the last month, including rainfall accumulations from Tropical Storm Nicole.

Deborah Drum, Deputy Department Director, Restoration Sciences Department, presented an update on the ecological conditions and stated the conditions have been consistently good. Ms. Drum also reported on the salinity levels of the Caloosahatchee and the St. Lucie estuaries.

Kimberley Taplin, USACE, provided the USACE's Lake Okeechobee report.

Public Comment: Mark Perry, Florida Oceanographic, commented on the discharges into the estuaries.

Everglades Restoration and Capital Projects

- 47. 2010-1027** A Resolution of the Governing Board of the South Florida Water Management District authorizing entering into a five-year Cooperative Agreement, with the option to renew for additional periods up to five years, not to exceed a total term of 24 years, with the U.S. Department of Agriculture - Agricultural Research Service for Operation, Maintenance, Repair, Replacement and Rehabilitation of the Mass Rearing Annex for the Melaleuca Eradication and Other Exotic Plants - Implement Biological Controls Project, a component of the Comprehensive Everglades Restoration Plan, in the amount of \$2,647,144 of which ad valorem funds (Comprehensive Everglades Restoration Plan Fund) in the amount of \$1,000 are budgeted in FY11 and the remainder is subject to Governing Board approval of the FY12-FY15 budgets; providing an effective date. (Contract Number 4600002150) (Paul Warner, ext. 6512)

No presentation provided.

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 47

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Glenn Waldman. Motion passed.

Executive Office

- 48. 2010-1035** Consideration of the Petition of the Conservancy of Southwest Florida and Ralf Brook to Amend the Caloosahatchee River Minimum Flow and Level Rule and the Recovery Strategy for the Caloosahatchee River Minimum Flow and Level (Beth Lewis, Senior Specialist Attorney, Office of Counsel, ext. 6343)

A) Overview of Draft Assessment of Existing Information for Caloosahatchee River Minimum Flows and Levels Update dated October 12, 2010

B) Enter a Final Order Denying the Petition of the Conservancy of Southwest Florida and Ralf Brookes to Amend Rule 40E-8.221(2) and Rule 40E-8.421(2), F.A.C.

Chair Buermann reported this agenda item will begin with staff's presentation on the proposed tasks that need to be completed to support an update to the Caloosahatchee Minimum Flows and Levels (MFLs).

Beth Lewis, Senior Specialist Attorney, reported that staff have documented the tasks needed to update the MFL criteria in a report entitled, "Draft Assessment of Existing Information for Caloosahatchee River Minimum Flows and Levels Update" dated October 12, 2010 (Agenda Item 48A). These tasks respond to the recommendations of the Peer Review Report (2000) and the District Status Update Report (2003). In order to undertake and finalize the tasks in the estimated timeframes as outlined in the report, requires realignment of staff time and budget priorities. Ms. Lewis reviewed the projects that maybe impacted:

- Biscayne Bay Water Resource Protection Rule
- Estero Bay MFL Rule
- Rookery Bay MFL Rule
- Model Development for Naples Bay SWIM Plan
- FP&L Turkey Point Monitoring Plan Implementation
- FP&L Turkey Point Completeness Reviews (Units 6/7)
- Caloosahatchee & St. Lucie River Estuaries
- Watershed Protection Plan update and ongoing research and monitoring
- Caloosahatchee River Watershed Protection Plan Update (due to Legislature March 2012)

Mr. Ammon reported that the draft assessment was developed in response to the petition to determine the impacts on this agency and what type of additional FTE's would be needed if the Board decides to move forward with rulemaking on amending the MFL for the Caloosahatchee.

There was Board discussion on the MFL done in 2000, the scientific data collected, and direction from the Peer Review in 2000.

Chair Buermann discussed starting the rulemaking process and have the process continue until the necessary data is collected.

Ms. Lewis reviewed the rulemaking requirements and process.

Mr. Ammon reported the timeframe for the MFL data collection and analysis would be four to five years.

Mr. Montgomery questioned if it is better to focus on the establishment of a water reservation for the Caloosahatchee or focus on amending the MFL.

Peter Doering, Chief Environmental Scientist, Restoration Science Department, discussed the C-43 reservoir project and tidal basin contribution. Data collection and analysis is critical to supporting rulemaking efforts.

Mr. Montgomery requested a more detailed project prioritization workshop with the Governing Board in order to keep up with the projects and issues.

Public Comment: Mick Denham, City of Sanibel, said the Board needs to restrict the agency's number of priorities.

Public Comment: Marcy LaHart, Conservancy of Southwest Florida, said this petition is a formal request for this rulemaking to be updated and discussed.

Public Comment: Joan Lawrence, U.S. Department of Interior, supports CERP and the implementation of CERP. The water protection rule needs to be in place.

Public Comment: Rae Ann Wessel, Sanibel Captiva Conservation Foundation, urged the Board to go forward with the five-year review.

Ms. Lewis provided staff's recommendation: Enter a Final Order Denying the Petition of the Conservancy of Southwest Florida and Ralf Brookes to Amend Rule 40E-8.221(2) and Rule 40E-8.421(2), F.A.C. The petition by the Conservancy of Southwest Florida requests the Governing Board to:

- Immediately initiate rulemaking to revise the MFL for the Caloosahatchee River;
- Initiate rulemaking to update the recovery strategy for achieving the Caloosahatchee River MFL.

Ms. Lewis explained the process and provided the Governing Board options:

- Accept petition and initiate rulemaking proceedings
- Deny petition with a written statement of reasons for its denial
- Otherwise comply with the requested action.

Representing Conservancy of Southwest Florida, Ms. LaHart reported on the Caloosahatchee MFL 2001 and noted it was established based upon existing model and targeted toward achieving target salinity for protection of Vallisneria. Ms. LaHart reported the minimum flow of 300 cfs is not enough to prevent significant harm.

Ms. LaHart then explained why the MFL should be amended even if there is going to be a reservation for the C-43 reservoir:

- Reservation for C-43 reservoir is to ensure water needed for restoration of the natural system is allocated for the natural system first.
- Reservation and MFLs are different tools intended for different purposes.
- MFL is to prevent further significant harm now. There is abundant science available to revise the MFL now.

Ms. Lewis reported that to meet the burden of proof regarding the MFL, additional information is needed in order to support the rulemaking.

There was Board discussion to postpone acting on the petition for 30 days.

Ms. LaHart stipulated to a 30 day extension, until the next Governing Board meeting on November 10, 2010.

Mr. Montgomery requested a detailed list of what the impacts would be if we focused on an MFL now versus focusing on a reservation plus a list of the issues for all the projects that would be impacted and delayed.

Ms. Estenoz supports coming back in 30 days with the following questions answered:

- The amount of delay/impacts to the other initiatives.
- An analysis to be done with the LOSA rule in place.

Mr. Ammon said the scientists still need three more years of data and time for analysis in order to have a defensible level of information to adopt an updated MFL.

There was further Board discussion of needing additional data, and what consumptive use permits might come forward in the next three years that would take water away from the Caloosahatchee.

The item will be continued at the November 10, 2010 Governing Board meeting.

Regulatory and Public Affairs

- 49. 2010-1028** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a one (1) year cooperative agreement with the City of Naples in fiscal year 2011 for the City's Aquifer Storage and Recovery (ASR) Program that includes the construction of an intake structure at the Golden Gate Canal and the ASR Well #3 in fiscal year 2011, in the total amount of \$6,500,000, of which the District contribution will be \$1,400,000, in dedicated Big Cypress Basin funds for fiscal year 2011; reviewed and recommended for approval by the Big Cypress Basin Board on August 27, 2010; providing an effective date. (Contract No. 4600002211)(Max Guerra, ext. 7612)

No presentation provided.

Motion made by Charles Dauray, seconded by Joe Collins to Approve the following item(s): 49

Vote called. Voting yes: Charles Dauray, Joe Collins, Sandy Batchelor, Eric Buermann, Shannon Estenoz, Jerry Montgomery, Kevin Powers, Glenn Waldman. Motion passed.

- 50. 2010-1029** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and to enter into a 3-year work order contract with Hazen and Sawyer, one of two firms selected for Preparation of Statements of Estimated Regulatory Costs (SERC), subject to successful negotiations, in an amount not-to exceed the total project funding of \$1,100,000 available for both contracts for SERC services, of which ad valorem funds of \$220,000 are budgeted in the FY2011 budget to support the Kissimmee River and Chain of Lakes Water Reservations, Protection of Wetlands for Indian River Lagoon-South, C-43 Water Reservation and Biscayne Bay Coastal Wetlands Project Implementation Report and the remainder is subject to Governing Board approval of the FY2012 and FY2013 budgets; providing an effective date. (Contract No. 4600002228). (Rod Braun, ext. 2925)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Joe Collins to Approve the following item(s): 50

Vote called. Voting yes: Shannon Estenoz, Joe Collins, Sandy Batchelor, Eric Buermann, Charles Dauray, Jerry Montgomery, Kevin Powers, Glenn Waldman. Motion passed.

- 51. 2010-1030** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and to enter into a 3-year work order contract with Entrix, one of two firms selected for Preparation of Statements of Estimated Regulatory Costs (SERC), subject to successful negotiations, in an amount not-to exceed the total project funding of \$1,100,000 available for both contracts for SERC services, of which ad valorem funds of \$220,000 are budgeted in the FY2011 budget to support the Kissimmee River and Chain of Lakes Water Reservations, Protection of Wetlands for Indian River Lagoon-South, C-43 Water Reservation and Biscayne Bay Coastal Wetlands Project Implementation Report and the remainder is subject to Governing Board approval of the FY2012 and FY2013 budgets; providing an effective date. (Contract No. 4600002229). (Rod Braun, ext. 2925)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Jerry Montgomery to Approve the following item(s): 51

Vote called. Voting yes: Shannon Estenoz, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Charles Dauray, Kevin Powers, Glenn Waldman. Motion passed.

Operations and Maintenance

- 52. 2010-1031** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 390 day contract with Underwater Engineering Services Incorporated, the lowest responsive and responsible bidder, for the C-41A Canal Bank Stabilization - Segment 1, in the amount of \$7,224,957 for which ad valorem funds in the amount of \$5,500,000 are budgeted; and the remainder is subject to Governing Board approval of the FY12 budget; providing an effective date. (Contract Number 4600002252) (Sara Sciotto, ext. 4077)

No presentation provided.

Motion made by Charles Dauray, seconded by Jerry Montgomery to Approve the following item(s): 52

Vote called. Voting yes: Charles Dauray, Jerry Montgomery, Sandy Batchelor, Eric Buermann, Joe Collins, Shannon Estenoz, Kevin Powers, Glenn Waldman. Motion passed.

- 53. 2010-1032** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 195 day contract with Close Construction Incorporated, the lowest responsive and responsible bidder, for the S-59 Concrete Repairs in the amount of \$1,089,775 for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600002258) (Alex Garcia, ext. 4048)

No presentation provided.

Motion made by Charles Dauray, seconded by Shannon Estenoz to Approve the following item(s): 53

Vote called. Voting yes: Charles Dauray, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Jerry Montgomery, Kevin Powers, Glenn Waldman. Motion passed.

- 54. 2010-1033** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 195 day contract with Close Construction Incorporated, the lowest responsive and responsible bidder, for the S-63 Concrete Repairs in the amount of \$1,108,549 for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600002257) (Alex Garcia, ext. 4048)

No presentation provided.

Motion made by Charles Dauray, seconded by Shannon Estenoz to Approve the following item(s): 54

Vote called. Voting yes: Charles Dauray, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Jerry Montgomery, Kevin Powers, Glenn Waldman. Motion passed.

55. Public Comment

- Regulatory Policy Issues
- General Public Comment

Public Comment: Rosa Durando, citizen, commented on saving the last remaining wetlands and opposing permits being approved in the western communities.

Ms. Wehle stated there will be a Compliance and Enforcement Workshop presentation in December.

Staff Reports

56. General Counsel Report - Sheryl Wood

Sheryl Wood, General Counsel, reported on an application for an ERP permit for the Briger Tract and also advised the Board of the hearing with the Special Master on October 21, 2010.

57. Executive Director's Report - Carol Wehle

- Report on Permits Issued by Authority Delegated to the Executive Director from September 1 to September 30, 2010

Ms. Wehle thanked Secretary Sole for his work in the U.S. Sugar land acquisition.

58. Board Comment

Chair Buermann reported on the 2011 Governing Board dates.

Attorney Client Sessions

Executive Office

- 61.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt, F. Bartolone, and outside counsel D. Moore.

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl G. Wood, ext. 6976)

Chair Buermann recessed to Attorney Client Session at 2:54 p.m. He announced the meeting would reconvene in approximately 60 minutes.

Chair Buermann reconvened the meeting at 5:04.

Sheryl Wood, General Counsel, reported no recommendations be taken by the Board on Agenda Item 61.

Adjournment

63. Adjourn

Chair Buermann adjourned the meeting at 5:07 p.m.

Eric Buermann
Governing Board Chairman
South Florida Water Management District Governing Board

Recorded By:

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
SFWMD